

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Malcolm and Peggy Johnson,

Plaintiffs,

v.

Dakota Community Bank, N.A.
A National Banking Corporation,

Defendant.

Case No. 115 CV-123

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441 et.seq., Defendant Dakota Community Bank & Trust, N.A., a National Banking Corporation, formerly known as Dakota Community Bank, N.A. (“DCBT”), by its attorney hereby removes this action from the District Court for Bowman County, North Dakota, Southwest Judicial District, to the United States District Court for the District of North Dakota, Southwestern Division. In support of this removal, DCBT states as follows:

1. On September 30, 2013, Plaintiffs Malcolm and Peggy Johnson (“Johnson”) commenced this action by serving upon Dakota Community Bank a Summons and Complaint. Plaintiff filed the Complaint in Bowman County District Court on, or about, October 2, 2013. A copy of all process pleadings, or orders served upon DCBT, in the Bowman County action, is attached hereto as Exhibit A.
2. Plaintiffs are residents of the State of Montana.
3. DCBT is a national banking corporation whose main office, as well as all branch offices, are located within the State of North Dakota. DCBT was originally incorporated as a North Dakota banking corporation.

4. Complete diversity exists between the Plaintiffs and Defendant.
5. The amount in controversy exceeds \$75,000, exclusive of interest and costs:
Plaintiffs claim economic damages, including overpayment of interest and fees, plus interest and fees overpaid and incurred as a result of DCBT causing the Plaintiffs to enter into unnecessary loans, plus damages for encumbrance of assets and real property for which DCBT should have had no security interest. Plaintiffs claim that this amount is in excess of \$50,000, without making a specific demand. Plaintiffs, however, allege that the amounts owed to DCBT by the Plaintiffs as of March 16, 2006 and October 2, 2008 were between \$1,100,000 and \$1,560,136. Using the lowest amount alleged to be due, if the alleged overpayment of interest is claimed to be 1%, or more, it would exceed \$25,000. Plaintiffs also allege damages because they allegedly sold land for less than they could have obtained had they not been under pressure to make a sale. Based on evidence obtained by DCBT, Plaintiffs sold the land in question for \$1,850,000; but they had listed the property for \$1,900,000 prior to becoming aware of the alleged misrepresentations. The sum of these two amounts, alone, exceeds \$75,000. (See, Exhibit B, Affidavit of Justin Wolbaum) But, in addition, the Plaintiffs allege they are entitled to the attorneys fees on account of alleged conversion of their property by DCBT. Finally, the Plaintiffs, in their prayer for relief, seek the right to amend their Complaint to seek exemplary damages, which exemplary damages can equal, under North Dakota law, the greater of two times the compensatory damages or \$250,000. Plaintiffs also claim unspecified

non-economic damages for the loss of real property that had intrinsic value due to the actions of DCBT.

6. The Notice of Removal is timely because it has been filed before the expiration of the deadline set forth by 28 U.S.C. § 1446(b), which requires a Notice of Removal be filed within 30 days after service.
7. This Court has original jurisdiction over the subject matter of the action pursuant to 28 U.S.C. § 1332(a)(1) because the matter is a civil action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.
8. Accordingly, because this Court has original jurisdiction of the matter pursuant to 28 U.S.C. § 1332, the matter may be removed to this Court pursuant to 28 U.S.C. § 1441.
9. A copy of this Notice of Removal has been filed with the Clerk of the District Court of Bowman County, North Dakota, Southwest Judicial District, and served upon Plaintiffs' counsel.

WHEREFORE, Dakota Community Bank & Trust, N.A. hereby removes this action from the District Court of Bowman County, North Dakota, Southwest Judicial District, to this Court, the United States District Court for the District of North Dakota, Southwestern Division.

Dated this 21st day of October, 2013.

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